

May 31, 2019

Mr. Kevin T. Garvey, RLA
D.S. Thaler and Associates, Inc.
7115 Ambassador Road
Suite 101
Baltimore, Maryland 21244-7428

RE: Timonium Terrace Assisted Living Facility
Forest Conservation Variance
Tracking # 03-19-2945

Dear Mr. Garvey:

A request for a variance from Baltimore County's Forest Conservation Law was received by this Department of Environmental Protection and Sustainability (EPS) on March 6, 2019. The variance seeks approval to remove one specimen tree on the property for the construction of an assisted living facility, its related parking lot and numerous stormwater management facilities. The specimen tree to be removed is a 34-inch diameter Black Walnut (*Juglans nigra*) in fair condition. The tree is located within an early seral stage, second-growth forest that was determined to have good structure. One other specimen tree in good condition would receive impacts to its critical root zone (CRZ) under the proposed plan, but that tree, a 36-inch silver maple (*Acer saccharinum*), is offsite. The project is an infill development on 2.6 acres within the long-standing Timonium Heights plat that is zoned for office residential use within the Urban Rural Demarcation Line. The applicant proposes to pay a fee-in-lieu of mitigation for the healthy native specimen tree to be removed and to root prune along the property line to minimize impacts to the offsite specimen tree to remain.

The Director of EPS may grant a special variance to the Forest Conservation law in accordance with criteria outlined in Section 33-6-116 of the Baltimore County Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the three criteria under Subsection 33-6-116(d) must be met, and all three (3) of the criteria under Subsection 33-6-116(e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116 (d)(1) of the Code) requires that the petitioner show that the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of his property. The applicant is seeking to build an assisted living facility on an assemblage of lots that existed well prior to the effective

date of the Forest Conservation Law. While full application of the law would provide a hardship in that there would be design limitations, it does not deprive the petitioner of all beneficial use of the property. Therefore, this criterion has not been met.

The second criterion (Subsection 33-6-116 (d)(2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions in the neighborhood. The petitioner's plight is due to unique circumstances associated with designing and constructing an assisted living facility on a property as well as the locations of existing specimen trees rather than the general conditions in the neighborhood. Therefore, we find that this criterion has been met.

The third criterion (Subsection 33-6-116 (d)(3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The areas to the north, east and west are zoned for business, retail and manufacturing uses where the area to the south is zoned for density residential use. The proposed assisted living facility fits into the spectrum of uses in the area and will not alter the essential character of this mixed-use neighborhood. Therefore, we find that this criterion has been met.

The fourth criterion (Subsection 33-6-116 (e)(1) of the Code) requires that the granting of the special variance will not adversely affect water quality. This project is honoring a riparian Forest Buffer to the north of the property and will meet current water quality management requirements through environmental site design. Therefore, we find that granting of the special variance will not adversely affect water quality and that this criterion has been met.

The fifth criterion (Subsection 33-6-116 (e)(2) of the Code) requires that the special variance request does not arise from a condition or circumstance which is the result of actions taken by the petitioner. The petitioner has not taken any actions necessitating this variance prior to its request. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116 (e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33 of the Baltimore County Code. Permitting the removal of one specimen tree for the construction of an assisted living facility that will comply with both the Forest Buffer Law and the Forest Conservation Law would be consistent with the spirit and intent the Forest Conservation Law. Mitigation for permanent impacts to a specimen tree within onsite forest will be conducted in accordance with the outcome an approved forest conservation worksheet, per current EPS policy. Therefore, this criterion has been met.

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Based on our review, this Department finds that sufficient required criteria have been met. Therefore, the requested variance is hereby approved in accordance with Section 33-6-116 of the Baltimore County Code with the following conditions:

1. Mitigation for the removal of the native specimen tree in fair condition shall be conducted in accordance with a Baltimore County-approved Forest Conservation worksheet since the specimen tree is within forest.
2. Prior to issuance of any Baltimore County permit, blaze orange high visibility fence shall be installed along the limit of disturbance (LOD) wherever the LOD is within 50 feet of any remaining specimen tree, Forest Conservation Easement, or Forest Buffer. This protective fence shall be illustrated on the plan view and mentioned in the sequence of operations on both the sediment control and the final Forest Conservation Plans.
3. The following note must appear on all subsequent plans for this project:
 - “A special variance was granted on May 31, 2019 to Baltimore County’s Forest Conservation Law to allow critical impact to one specimen tree. Conditions were placed on this variance, including offsite reforestation and onsite protection of remaining forest resources.”

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and a new variance request. Moreover, a special variance to Baltimore County’s Forest Conservation Law will be required for removal of any specimen trees shown to remain on this plan.

Please have the appropriate representative sign the statement on the following page and return a signed copy of this entire letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If you have any questions regarding this correspondence, please contact Mr. Michael Kulis at (410) 887-3980.

Sincerely yours,

David V. Lykens
Director

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DVL/msk

c. Marian Honeczy, Maryland Dept. of Natural Resources

I/we agree to the conditions enumerated in this approval letter to bring my/our property into compliance with Baltimore County's Forest Conservation Law.

Timonium Terrace Representative

Date

Printed Name